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EXAMINER

GATES, ERIC ANDREW

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARKUS ALLEMANN,
WOLFGANG HIRSCHBURGER and ILLYA KOVARIK

Appeal 2009-007133
Application 10/757,660
Technology Center 3700

Before SALLY GARDNER LANE, SALLY C. MEDLEY and MICHAEL
P. TIERNEY, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Credo Technology Corporation (“Credo”), the real party in interest, seeks review under 35 U.S.C. § 134(a) of a Final Rejection of claims 1-12. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM.

BACKGROUND

Credo discloses, referring to Credo's figure 1 reproduced below [numbers from figure 1 inserted], a motorized rotary hand tool [10] including a light touch switch [30]. Abs.; Spec. pp. 3-7.

Credo's figure 1 is reproduced below:

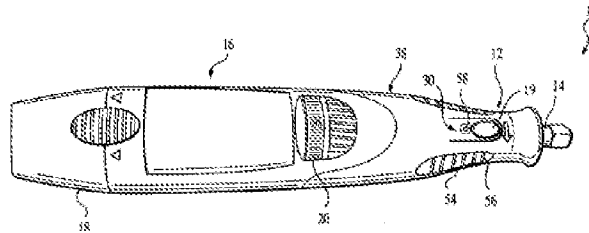


Figure 1 above depicts a rotary hand tool.

Claim 1 is illustrative:

A control mechanism for a rotary hand tool having a generally cylindrical housing in which a drive motor is located, the housing having a generally tapered nose portion at an end from which a motor output shaft extends and a grip portion around which an operator can wrap a hand during operation of the tool and within which portion the motor is housed, said control mechanism being a part of the tool and located substantially within the housing thereof and comprising:

an electrical control circuit contained entirely within said housing, said circuit controlling the application of power to and the operation of the motor, including supplying current to the motor; and

a light touch switch having at least a first position and a second position coupled to said electrical control circuit for selectively enabling or disabling said control circuit to turn the motor on and off, wherein said motor current does not flow through said switch;

wherein said switch is disposed on the tapered nose portion of the rotary hand tool such that an operator can actuate said switch without altering the operator's grip on the tool.

The Examiner relies on the following prior art references:

| | | |
|-------------|-----------|---------------|
| Crutchfield | 4,866,319 | Sep. 12, 1989 |
| Von Hollen | 3,640,635 | Feb. 8, 1972 |

Credo appeals the following rejections:

1. Claims 1-5, 10 and 12 under 35 U.S.C. § 102(b) as anticipated by Crutchfield.
2. Claims 6-9 and 11 under 35 U.S.C. § 103(a) as unpatentable over Crutchfield and Von Hollen.

ISSUES

Has Credo shown that the Examiner incorrectly found that Crutchfield describes: 1) a switch in which motor current does not flow through the switch; and 2) a switch containing at least a pair of switch contacts that is configured so that the motor current does not pass through the switch contacts?

FINDINGS OF FACT

1. A switch is defined as: “a device for making, breaking, or changing the connections in an electrical circuit”. Merriam Webster Online Dictionary, available at <http://www.merriam-webster.com/dictionary/switch> (last visited July 28, 2010).

Credo's Specification

2. Credo's Specification discloses, referring to Credo's figure 4 reproduced below [numbers from figure 4 inserted], a light touch

switch [30] a rectangular housing [32], a spring-biased rectangular switch element [34] and electrical contact legs [36]. Spec. p. 5; fig. 4.

Credo's figure 4 is below:

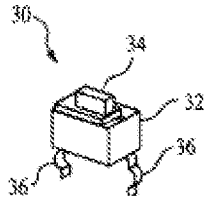


Figure 4 above depicts a light touch switch.

Crutchfield

3. Crutchfield describes, referring to Crutchfield's figure 2 reproduced below [numbers from figure 2 inserted], an erasing machine [10] including a housing [12] a motor [26] and a switch assembly [28]. Col. 3, ll. 30-33; col. 3, l. 64-col. 4, l. 6.

Crutchfield's figure 2 is below:

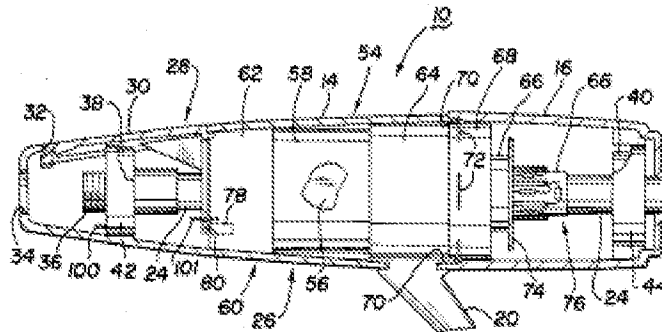


Figure 2 above depicts an erasing machine.

4. The switch assembly [28] includes the switch button [30], a microswitch [78] and a spring which biases the switch button [30] to the rest or "off" position. Col. 2, ll. 9-17; col. 4, ll. 46-49.
5. The microswitch [78] includes a button [80] which is moved by switch assembly [28] when the switch button [30] is depressed to the "on" position, causing the microswitch [78] to provide continuity in the circuit between the motor [26] and the rectifier [76] output that

- provides DC voltage to the motor [26]. Col. 2, ll. 12-15; col. 3, ll. 44-46; col. 4, ll. 34-45.
6. Crutchfield describes, referring to Crutchfield's figures 4a-4b reproduced below [numbers from figures 4a-4b inserted], that switch button [30] includes a lever portion [88] and a ring-like portion [86] that presses against the button [80] to activate the microswitch [78] when the lever portion [88] is depressed to the "on" position. Col. 4, ll. 55-58, 64-68.

Crutchfield's figures 4a and 4b are below:

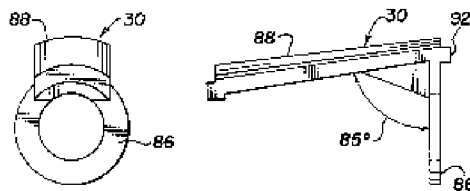


Fig. 4a

Fig. 4b

Figures 4a and 4b above depict the switch button.

PRINCIPLES OF LAW

In construing claim language during prosecution, the PTO applies the broadest reasonable interpretation of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by applicant's specification. *In re Morris*, 127 F.3d 1048, 1054 (Fed. Cir. 1997). The broadest reasonable interpretation should be consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969). But, limitations should not be read into the claims from the specification. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

Claims 1-9

Independent claim 1 recites (disputed limitations in *italics*): “a light touch *switch* having at least a first position and a second position coupled to said electrical control circuit for selectively enabling or disabling said control circuit to turn the motor on and off, *wherein said motor current does not flow through said switch . . .*.”

Credo and the Examiner disagree about the meaning of the term “switch.” Credo argues that the Examiner’s characterization of Crutchfield’s switch button [30] as a switch (Ans. 4) is contrary to Crutchfield’s Specification which describes a switch assembly [28] comprising a mounting assembly [62], a microswitch [78], a switch button [30] and a spring. App. Br. 9; Reply Br. 9-10, citing col. 4, ll. 45-49. Credo further argues that Crutchfield’s microswitch [78] is the only actual switch which necessarily has the switch contacts, while switch button [30] is just a mechanical linkage. App. Br. 9, Reply Br. 2, citing col. 4, ll. 27-45, 55-58; col. 7, ll. 40-42. We understand Credo to argue that the meaning of a “switch” requires the switch to necessarily have electrical contacts.

The Examiner directs attention to a dictionary definition which defines a switch as “a device for making, breaking, or changing the connections in an electrical circuit.” Ans. 8. The Examiner further explains that the definition of a switch and the claim language do not require the switch to be part of the electrical linkage. Ans. 8.

We decline Credo’s invitation to narrowly construe the term “switch.” In construing claim language during prosecution, the PTO applies the broadest reasonable interpretation of the words in their ordinary usage as

they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by applicant's specification. *Morris*, 127 F.3d at 1054. Credo does not direct us to, and we can not find, where Credo's Specification provides an explicit definition for the term "switch."

Consistent with the dictionary definition, the broadest reasonable meaning for "switch" includes: 1) a switch actuator (i.e., switch button); 2) an electrical switch with electrical contacts; or 3) both the switch actuator and electrical switch together. A switch actuator is a mechanical device used for making, breaking, or changing the connections in an electrical circuit, and an electrical switch with electrical contacts is also an electrical device used for making, breaking, or changing the connections in an electrical circuit.

The broadest reasonable interpretation of "switch" is also consistent with Credo's Specification which interchangeably refers to the switch element [34] (i.e., actuator) and the light touch switch [30] (with contacts) as the light touch switch. *Compare* Spec. p. 6, l. 9-p. 7, l. 2; fig. 5 *with* Spec. p. 5, l. 3-p. 6, l. 8; fig. 4.

The Examiner's interpretation of "switch" is reasonable, consistent with Credo's own specification, and Credo does not otherwise direct us to record evidence demonstrating that it is not reasonable. We note that if Credo wishes for the claimed "switch" to mean an electrical switch with electrical contacts, upon further prosecution Credo may amend their claims accordingly. The broadest reasonable interpretation rule recognizes that before a patent is granted the claims are readily amended as a part of the examination process and that an applicant has the opportunity and

responsibility to remove any ambiguity in claim meaning by making an amendment. *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). In addition, Credo does not persuasively argue nor direct us to record evidence demonstrating that the Examiner incorrectly found that the switch [30] does not have motor current running through it. Ans. 4.

For all these reasons, we sustain the rejection of claims 1-5 as anticipated by Crutchfield. Credo does not present separate arguments addressing the limitations of claims 6-9, which depend from claim 1. App. Br. 13. Therefore, for the same reasons we sustain the rejection of claims 6-9 as obvious over Crutchfield and Von Hollen.

Claims 10-12

Independent claim 10 recites (disputed limitations in *italics*): “*a switch having a switch button and containing at least a pair of switch contacts that are selectively opened and closed responsive to actuation of said switch button . . . said switch being configured so that said motor current does not pass through the switch contacts during operation of the motor . . .*”

Crutchfield describes that switch button [30] includes a lever portion [88] and a ring-like portion [86] that presses against a button [80] to activate the microswitch [78] when the lever portion [88] is depressed to the “on” position. Col. 4, ll. 55-58, 64-68. The Examiner finds that the button [80] and the ring-like portion [86] are a pair of switch contacts and lever portion [88] is the switch button of the switch [30]. Ans. 5. The Examiner further finds that the switch [30] is configured so that motor current does not pass through the contacts [80], [86] during operation of the motor. Ans. 5, 8.

In addition to the arguments raised with respect to claims 1-5, 10 and 12, Credo argues that if only Crutchfield's switch button [30] corresponds to the claimed switch, the switch would have no contacts, which is a physical impossibility. App. Br. 12. Credo's arguments are unpersuasive since they do not meaningfully explain why Crutchfield's button [80] and ring-like portion [86] are not switch contacts as the Examiner found. The button [80] and the ring like portion [86] serve as mechanical switch contacts since the ring-like portion [86] presses against the button [80] to activate the microswitch [78] when the lever portion [88] is depressed to the "on" position. Col. 4, ll. 55-58, 64-68. To the extent that Credo argues that Crutchfield's switch button [30] would have no *electrical* contacts, these arguments are not commensurate in scope with the claim limitations since claim 10 does not recite "electrical contacts".

For all these reasons, we sustain the rejection of claims 10 and 12 as anticipated by Crutchfield. Credo does not present separate arguments addressing the limitations of claim 11, which depends from claim 10. App. Br. 14. Therefore, for the same reasons we sustain the rejection of claim 11 as obvious over Crutchfield and Von Hollen.

DECISION

We AFFIRM the 35 U.S.C. § 102(b) rejection of claims 1-5, 10 and 12 as anticipated by Crutchfield.

We AFFIRM the 35 U.S.C. § 103(a) rejection of claims 6-9 and 11 as unpatentable over Crutchfield and Von Hollen.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1) (2009).

ORDER

AFFIRMED

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